

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA.

C.R. NO. 111 OF 2001.
Judgment reserved on: 12.6.2007.
Date of decision : 20th July 2007.

Krishan Lal Bhatia Petitioner.

Vs.
Ramesh Kumar Bansal and another. Respondents.

Coram
The Hon'ble Mr. Justice Surinder Singh, Judge.

Whether approved for reporting? Yes.

For the petitioner: Mr. R.K. Bawa, Sr. Advocate, with
Mr. Inderjeet Narwal, Advocate.

For the respondents: Mr. Bimal Gupta, Advocate.

Surinder Singh, J:

This respondents herein are the landlord and the petitioner is tenant. They are being referred to accordingly hereinafter.

The tenanted premises as per para-8 of the petition by the landlord under Section 14 of the H.P. Urban Rent Control Act, 1987, hereinafter referred to as the Act, comprises of:-

“One shop, the area of which is 3.20 x 3.30 sq.metres, situated in Khata/Khatauni No.147/218, Khasra No.481, measuring 24.57 sq.meter.”

According to the landlords, the premises in question were rented out to the tenant at the rate of Rs.40/- per month with a count of statutory increase of 10% after five years, the rent has come to Rs.54/- per month.

Whether reporters of local Papers may be allowed to see the judgment? Yes.

The landlord sought the ejectment of the tenant from the above mentioned tenanted premises on the following grounds:-

- (i) Non-payment of rent w.e.f. 1.11.1991;
- (ii) The premises in question is more than 18 years old. The same required immediate reconstruction as the stair case of the eastern side of the shop and Manti on it were demolished by the Municipal Committee because it was in dilapidated condition. The demised premises are also in dilapidated condition as the wooden rafter on the roof is completely damaged. There is leakage of rainy water and the same is unsafe and unfit for human habitation;
- (iii) The adjoining shop was also in dilapidated condition, which required reconstruction. Thus, it was got vacated and was thereafter reconstructed in the year 1984, but the petitioner did not vacate the demised premises, which could not be reconstructed.
- (iv) The land owners have all the means and resources to raise the proposed construction, as it has been earlier done by the them as aforesaid.

The tenant while resisting and contesting the eviction petition, assailed the locus standi of the landlords, to file the petition and also questioned the maintainability, on the ground that similar petition was filed by their father Amar Singh, bearing No.8/2 of 1994/2/5/1994, but finding no merit,

the same was dismissed in default on 20.10.1995 and also disputed the cause of action. On merits, he denied the arrears of rent and that the demised premises are in dilapidated condition and unsafe and unfit for human habitation and same were required by them bonafide, for reconstruction. The tenancy under late Sh. Amar Nath, the father of the landlords was admitted, however, it is denied that on account of inheritance, his successors have any locus-standi to file the present petition.

On the pleadings of the parties, the Rent Controller framed the following issues on 5.4.1999:-

1. Whether the respondent is in arrears of rent in respect of the premises, as alleged? OPP.
2. Whether the premises are required immediately for reconstruction being in dilapidated condition, as alleged? OPP.
3. Whether the petitioners are the exclusive owner/landlord on the premises? OPP.
4. Whether the present structure of the premises is unfit for human habitation, if so, its effect? OPP.
5. Whether the petitioners have no locus standi to file the present petition? OPR.
6. Whether the petition is hit by the principle of resjudicata, as alleged in para-2 of the preliminary objections? OPR.
7. Whether the petition is the result of the malafide of the petitioners, if so, its effect? OPR.
8. Whether the petitioners have no cause of action to file the present petition? OPR.
9. Relief.

After completing the enquiry, the learned Rent Controller decided all the issues in favour of the landlords and against the tenant, but issues No.5 and 8 were held redundant

on account of findings on other issues, consequently, the tenant was ordered to be ejected from the demised premises, on the grounds of arrears of rent w.e.f. 1.11.1999 at the rate of Rs.40/- per month and that the demised premises are in dilapidated condition and unfit for habitation and were bonafide required by the landlord for reconstruction. The respondents were held to be the exclusive Landlords of the demised premises have a locus standi and cause of action to file the petition. There were no malafides and no res-judicata applied.

The above order of eviction was assailed by the tenant in appeal before the appellate authority. Before the appellate authority, the tenant did not dispute the petitioners-landlords having inherited the demised premises from their father Amar Nath, but the relationship of the landlord and tenant with them was denied, therefore, the petition was alleged to be not maintainable. It was contended that the issues were wrongly decided against him. It was not disputed that the land owners have got the propose site plan sanctioned from the Municipal Committee but it is contended that they have no sufficient means for reconstruction. An application under Order 26 Rule 9 of the Code of Civil Procedure was also moved to know whether the demised premises required reconstruction. From the controversy raised before the appellate authority, the following points were framed for determination of the appeal:-

1. Whether there is no relationship of the landlord and tenant between the parties?

2. Whether the matter requires further inquiry by this Court under Section 24 of the H.P. Urban Rent Control Act, 1987 and thus the application under Order 26 Rule 9 C.P.C. is required to be allowed?

After hearing the parties, both points answered in negative, consequently, the appeal was dismissed.

In the present revision petition, the tenant has raised the first point that late Shri Amar Nath, the predecessor-in-interest of the petitioners-landlord had also filed on the similar ground a petition for eviction as aforesaid, which was dismissed in default on 20.10.1995. Therefore, no fresh petition on the similar grounds could be filed and entertained as it is hit by principle of resjudicata. To substantiate the point, the tenant had relied upon copy of order Ext.D1, before the Rent Controller, which is reproduced as under:-

"20.10.1995.

Present: None.

The case called thrice but none is appearing. Hence the petition is hereby dismissed in default. The file after completion be consigned to records.

Sd/-
Rent Controller (I),
Sirmaur at Nahan. "

Thus, it is argued by the learned counsel for tenant that the fresh petition by the present landlord was not maintainable.

In fact Section 18 of the H.P. Urban Rent Control Act, 1987 reads as under:-

"18. Decisions which have become final not to be reopened:-

The Controller shall summarily reject any application under sub Section (2) or under Sub Section (3) of Section 14 which raises

substantial issues as have been finally decided in a former proceeding under this Act.”

The Order Ext.D1 aforesaid does not attract the provisions of Section 18 *ibid*. It has been held by the apex Court in **AIR 1989 S.C. 879 (881)** where a matter, though in issue, has, as a fact, been not heard and decided either actually or constrictively it cannot operate as *resjudicata*. It has also been held by the Supreme Court in **AIR 1970 SC 898** that in order to support a plea of *resjudicata* former decision must have been on merits of the questions in issue on the subsequent suit. Therefore, in my opinion, the dismissal of the suit or other proceedings for default under the provisions of Order 9 of the Code of Civil Procedure cannot operate as *resjudicata*.

The second point raised by the learned counsel for the tenant is that the adjoining shop which was earlier in occupation of the landlord was vacated, some reconstruction was made therein and it was rented out to one Ram Kumar. No further construction was done in the said portion by them. The authorities below had wrongly held that the adjoining shop was got vacated from this tenant or landlord for reconstruction was incorrect and further that the demised premises are not in dilapidated condition and does not require any reconstruction. The tenant is earning his livelihood from the said shop, but in any case any renovation or reconstruction is required, it can be done by the landlord without vacating and demolishing it. This fact was not considered by the trial court below, despite the fact that an

application was also moved for appointment of the Local Commissioner, which was wrongly dismissed.

I have considered the above points and arguments advanced in this behalf. There are concurrent findings of fact arrived at by both authorities below and I do not find any perversity therein. It stands proved on record that the premises are admittedly now 80 years old and not in a good condition. The staircase was demolished, the roof is in bad condition and the adjacent portion was got reconstructed. The Plan Ext.P4 is duly sanctioned. The Landlords have explained and shown having sufficient funds. They have capacity to raise the construction. Therefore, in these circumstances, the claim of the Landlords for reconstruction and re-erection is bonafide and honest in the circumstances. It has been held in **Prem Chand alias Prem Nath v. Smt. Shanta Prabhakar** [1997(2) Vol.51 RCR 672] by the Supreme Court that once bonafides are proved, the landlord is entitled to evict tenant, if he required the premises for building or rebuilding.

Further the appointment of Local Commissioner was absolutely not required in the light of enough evidence and proved facts on record. The point has been rightly and aptly dealt and decided in detail by the appellate authority. The appointment of the Local Commissioner would have been an exercise in futility.

Since there are concurrent findings of the fact, on the question of bonafide requirement of the landlords, which cannot be disturbed in the revision petition, as these are

questions of fact and no law point is involved. Besides such concurrent findings can not be disturbed within the revisional jurisdiction by reappreciating the evidence as held in **Lachhman Dass v. Santokh Singh [(1995) 4 SCC 201].**

For the foregoing reasons, the present petition is dismissed, as I do not find anything worth interference. The two authorities have thoroughly examined and appreciated the evidence led by the parties and have recorded the definite findings and nothing is born out that these were based not on the evidence on record. Thus the points taken in revision petition cannot be accepted as a sound reasoning to set-aside the concurrent findings of the fact. Accordingly, the revision petition is dismissed with costs quantified at Rs.2,000/-.

July 20,2007.
(Pds)

(Surinder Singh)
Judge.